

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-1186

United States of America,

Appellee,

v.

Omar Martin Ramirez,

Appellant.

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* Appeal from the United States
* District Court for the
* District of South Dakota.

* **[UNPUBLISHED]**
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Submitted: August 2, 2001

Filed: August 8, 2001

Before BOWMAN, LOKEN, and HANSEN, Circuit Judges.

PER CURIAM.

Omar Martin Ramirez was found guilty by a jury of being an illegal alien and convicted felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1) and (5)(A); he was acquitted of possessing a short shotgun. The district court¹ sentenced him to concurrent 52-month prison terms and 3-year supervised release terms. On appeal, Ramirez argues the district court improperly calculated his base offense level based on possession of a short shotgun, see U.S.S.G. § 2K2.1(a)(3), when that fact was

¹The HONORABLE ANDREW W. BOGUE, United States District Judge for the District of South Dakota.

not charged as an element in the counts of conviction or proved beyond a reasonable doubt, and the jury found him not guilty of possessing such a gun.

We conclude the district court did not err in sentencing Ramirez. The court had authority to impose any sentence not exceeding 120 months imprisonment. See 18 U.S.C. § 924(a)(2) (10-year maximum prison term for violating 18 U.S.C. § 922(g)); United States v. Aguayo-Delgado, 220 F.3d 926, 933 (8th Cir.) (judge-found fact may permissibly alter defendant's sentence within statutory range for offense simpliciter), cert. denied, 121 S. Ct. 600 (2000). Further, the court was free to consider conduct underlying the count on which Ramirez was acquitted. See U.S.S.G. § 1B1.3(a)(1)(A) (base offense level determined on basis of all acts and omissions committed by defendant during commission of offense of conviction).

Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.